

December 16, 2016

VIA ECF & HAND DELIVERY

The Honorable Sarah Netburn
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *Coordinated RMBS Trustee Litigation against HSBC Bank USA, N.A.,*
Nos. 14-cv-8175; 14-cv-9366; 14-cv-10101; 15-cv-02144; 15-cv-10032; 15-cv-10096

Dear Judge Netburn:

On behalf of Plaintiffs, and pursuant to the Court's November 29, 2016 Order [BR ECF No. 267], we write to update the Court on the status of scheduling fact depositions in the above-referenced coordinated actions against Defendant HSBC Bank USA, N.A. ("HSBC").

I. HSBC Witnesses

Plaintiffs have encountered difficulties with proceeding with HSBC fact witness depositions. To date, Plaintiffs have only completed three HSBC fact depositions of HSBC witnesses.

First, HSBC refuses to offer a deposition date for HSBC CFO Gerard Mattia, a defendant and deponent in the FHFA Coordinated Litigation and a witness whom Plaintiffs have long sought to depose. Plaintiffs noticed Mr. Mattia's deposition three months ago (on September 19), repeatedly sought alternative dates from HSBC, and filed a letter motion on November 18 to compel Mr. Mattia's deposition. Immediately following the Court's November 29 Order, Plaintiffs again made repeated requests for Mr. Mattia's availability. Nevertheless, HSBC still has not offered any dates for Mr. Mattia's deposition.

Second, Plaintiffs noticed the deposition of Christina Baldwin Carr, Mark Wirth, Audrey Zabriskie, Kevin Fisher, Sue Lomax and Marcy Hertz more than three months ago, on September 8, 2016. HSBC declined to provide Plaintiffs with deposition dates for these individuals until after close of business today, on the Court's deadline. Plaintiffs are considering the proposed dates and will meet and confer with HSBC if any of the proposed dates are unworkable. Thus, despite Plaintiffs' attempts early on to spread out fact depositions, such delays over a period of months in getting dates from HSBC have resulted in a more compressed deposition schedule.

Finally, on December 13, Plaintiffs noticed ten additional fact deponents. This evening, HSBC has offered dates for three of these witnesses. Plaintiffs are considering these proposed dates, and await HSBC's response on the remaining seven witnesses.

II. Plaintiff Fact Witnesses

BlackRock Plaintiffs: In accordance with the Court's directions, immediately following entry of the November 29 Order, the BlackRock Plaintiffs attempted to meet and confer with HSBC concerning deposition dates for both HSBC's and Plaintiffs' fact witnesses. HSBC,

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however, was not prepared to provide any dates for its witnesses. Nevertheless, the BlackRock Plaintiffs complied with their obligations under the Court's November 29 Order by providing HSBC with a complete schedule of deposition dates for all 36 of its noticed deponents on December 13, 2016.¹ On December 15, 2016, HSBC took its first fact deposition of the BlackRock Plaintiffs.

Royal Park: To date, HSBC has taken one Rule 30(b)(6) deposition of Royal Park Investments SA/NV ("Royal Park"). The parties have agreed on a date for the deposition of one of Royal Park's portfolio managers in January 2016. The parties have agreed that HSBC will assess its need for further depositions after it has taken the deposition of this portfolio manager.

Phoenix Light: To date, HSBC has taken three Rule 30(b)(6) depositions of the Phoenix Light Plaintiffs and one Rule 30(b)(1) fact deposition of Plaintiffs' outside director. HSBC has not identified or served notices for any additional depositions of the Phoenix Light Plaintiffs. On December 15, HSBC indicated that it would like additional time to identify and schedule such depositions as it is continuing to refine its list of potential witnesses. The parties have agreed to continue to meet and confer regarding scheduling any additional depositions.

NCUA: To date, HSBC has taken one Rule 30(b)(6) deposition in the NCUA action. The parties have scheduled four NCUA fact depositions. HSBC did not identify other fact witnesses until December 14, 2016 when it sent a list of 14 deponents, most of whom are former employees of the corporate credit unions. NCUA is endeavoring to locate, contact, and discuss scheduling with those individuals.

Commerzbank: HSBC sent Commerzbank a request for depositions for the first time on Wednesday. Commerzbank had an initial meet and confer with HSBC concerning scheduling the depositions on Thursday. In light of only receiving the request two days ago, the parties have agreed to continue to meet and confer regarding the scheduling of Commerzbank depositions.

Triaxx: HSBC has not yet taken or scheduled any depositions of Triaxx. HSBC and Triaxx have agreed to meet and confer as to deposition scheduling once additional discovery has been completed.

¹ With respect to certain of these individuals, particularly the high level senior executives of Plaintiffs who had little or nothing to do with the Plaintiffs' RMBS investments at issue, Plaintiffs are considering whether to move to quash these depositions. Before doing so, however, Plaintiffs will meet and confer with HSBC. Nevertheless, Plaintiffs reserve all rights and objections with respect to these individuals' depositions.

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Respectfully submitted,

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cc: All counsel of record (via ECF)